

Service Date: April 18, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

The State of Montana,)	
)	
Plaintiff,)	TRANSPORTATION DIVISION
)	
vs.)	
)	DOCKET NO. T-9216
Lance Stalnker and/or Middle Creek)	
Farms, Inc.,)	ORDER NO. 5839
)	
Defendant.)	

FACTS

On January 28, 1987, Lance Stalnker, a driver for Middle Creek Farms, Inc. (defendant), was issued a citation by a GVW officer for hauling fertilizer in intrastate commerce without a Certificate of Public Convenience and Necessity. Mr. Stalnker was transporting the fertilizer from a warehouse in Collins, Montana, to Belgrade, Montana. The fertilizer had previously been shipped to Collins from Edmonton, Alberta. The ultimate destination of the fertilizer when shipped from Edmonton was unknown.

The citation was initially prosecuted by the Lewis and Clark County Attorney's Office in Justice Court No. 2, before Justice of the Peace Bernard F. McCarthy. The case was assigned Cause No. GVW87-17.

On October 1, 1987, the defendant filed a Motion to Dismiss the citation in justice court and a brief in support of the Motion. On November 2, 1987, the Lewis and Clark County Attorney's Office filed a brief in opposition to the Motion. On November 10, 1987, defendant filed a reply brief in support of the Motion.

A hearing on the Motion to Dismiss was scheduled for December 9, 1988, in justice court. Upon failure of the defendant to appear the Motion was denied. The defendant moved for reconsideration of the denial of its Motion to Dismiss on December 10, 1988. The Motion for Reconsideration was never ruled on by the justice court. Several trial dates were set, but were continued at the request of the defendant.

On February 11, 1988, the Public Service Commission (Commission) received a letter from Lewis and Clark county Attorney Mike McGrath stating that he was turning Cause No. GVW87-17 over to the Commission staff for further prosecution. His reasoning was that the case involved a question of interstate/intrastate transportation of special interest to the Commission.

Citations issued pursuant to Title 69, Chapter 12, MCA, are either prosecuted in justice court or before the Commission. See 69-12-108, MCA. On March 8, 1988, the Commission filed a Motion in justice court to Remove Cause No. GVW87-17 to the Jurisdiction of the Public Service Commission pursuant to 69-12-108(1), MCA. The Commission determined that it was more efficient for Commission staff to prosecute motor carrier citations before the Commission, than in justice court. On March 9, 1988, Justice of the Peace Bernard McCarthy signed an Order removing Cause No. GVW87-17 to Commission jurisdiction. Cause No. GVW87-17 was assigned Commission Docket No. T-9216.

After the case was removed to Commission jurisdiction the defendant filed an objection to the removal in justice court and asked the Commission to recommend dismissal of the citation in justice court. Having assumed jurisdiction the Commission informed the defendant by letter that it would rule on defendant's Motion to Reconsider the justice court's denial of its Motion to Dismiss. The Commission determined, at a work session to which the defendant orally waived its right of appearance, that it would not reconsider the justice court's denial of defendant's Motion to Dismiss. The Commission found that the transportation in question was in intrastate commerce, notwithstanding the argument made by the defendant in its brief in justice court. The Commission did, however, indicate to staff that, should defendant not contest the case further, it would accept the minimum fine allowed by 69-12-108(1), MCA.

On April 5, 1988, the Commission received from defendant the sum of twenty-five dollars (\$25), to be deposited to the general fund pursuant to 69-12-108(1), MCA, as a penalty for the unauthorized transportation in intrastate commerce described in paragraph 1.

CONCLUSIONS

1. The Commission properly has jurisdiction in this matter pursuant to 69-12-108(1), MCA, and pursuant to the order of March 9, 1988, issued by the justice court, removing Cause No. GVW87-17 to Commission jurisdiction.

2. The Commission may properly assess and collect penalties for deposit to the general fund for violations of Title 69, Chapter 12, MCA. See 69-12-108(1), MCA.

ORDER

NOW THEREFORE IT IS ORDERED AS FOLLOWS:

1. A penalty in the amount of twenty-five (\$25) is hereby assessed against the defendant, Lance Stalnker and/or Middle Creek Farms, for the unauthorized transportation in intrastate commerce, described above, in violation of Title 69, Chapter 12, MCA.

2. Said penalty having been remitted to the Commission by the defendant, the Commission declares Docket No. T-9216 closed.

Done and Dated this 18th day of April, 1988 by a vote of
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Carol Frasier
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.